

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANNA PATRICK, ET AL., individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DAVID L. RAMSEY, III, individually; HAPPY
HOUR MEDIA GROUP, LLC, a Washington
limited liability company; THE LAMPO
GROUP, LLC, a Tennessee limited liability
company,

Defendants.

Case No.: 2:23-cv-00630 JLR

**DEFENDANT HAPPY HOUR MEDIA
GROUP, LLC'S MOTION TO DISMISS
THE COMPLAINT**

**NOTED ON MOTION CALENDAR:
October 27, 2023**

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I. INTRODUCTION

The Complaint identifies the Plaintiffs as customers of Reed Hein and focuses on the alleged conduct of Reed Hein and its owner, Brandon Reed. As the Complaint recognizes, a class of customers already brought their claims against Reed Hein and Brandon Reed in the *Adolph* lawsuit.¹ What the Complaint does not say, but the Court can take judicial notice of, is that the Plaintiffs here are members of the *Adolph* class; they have settled their claims against Reed Hein and Brandon Reed; the judgment in *Adolph* provides that the Plaintiffs “will never execute upon or attempt to enforce any judgment against the assets of” Brandon Reed; and Happy Hour is an asset of Brandon Reed. Because the *Adolph* Court has prohibited Plaintiffs from recovering anything from Happy Hour, the Plaintiffs cannot state a claim upon which relief can be granted against Happy Hour.

In addition to being legally barred, the claims against Happy Hour do not rise to the level of plausibility required in a federal court complaint. In all its dozens of pages, the Complaint contains only eight paragraphs that make substantive allegations against Happy Hour. Together, those paragraphs allege that Happy Hour acted as an intermediary for payments between Reed Hein and Dave Ramsey and that Reed Hein and Happy Hour “struck a deal” to have Ramsey mislead people. The Complaint does not allege any substance, details, or factual matter identifying the terms of the supposed deal. The scanty allegations against Happy Hour are devoid of specifics and cannot support any of Plaintiffs’ three causes of action.

Finally, as demonstrated in the briefing on the motion to dismiss from the Ramsey Defendants (Dave Ramsey and the Lampo Group), many of the Plaintiffs’ claims, even if otherwise viable, are time-barred.

¹ Dkt. 1 at ¶ 106.

Happy Hour respectfully requests that the Court dismiss the claims against it with prejudice due to the Plaintiffs' failure to state a plausible claim, the untimeliness of the claims, and the *Adolph* Court's prohibition against the Plaintiffs executing or enforcing any judgment against Happy Hour.

II. FACTUAL BACKGROUND

A. The Plaintiffs are prohibited from executing or enforcing any judgment against Happy Hour by the judgement in the *Adolph* matter.

1. The Plaintiffs and all others in the proposed class are members of the *Adolph* class.

The Complaint focuses on the business practices of Reed Hein & Associates ("Reed Hein"), a timeshare exit company, and its owner, Brandon Reed.² Reed Hein and Mr. Reed were defendants in the class action lawsuit *Adolph v. Reed Hein & Associates et al.*, filed in this Court on October 9, 2021, by the Albert Law Firm, which also represents the Plaintiffs in this action.³ On October 25, 2022, the *Adolph* court certified the following class:

All persons who paid fees to Reed Hein for services to terminate their timeshare obligations, except those persons who received refunds of the fees that they paid.⁴

As in the *Adolph* case, the Plaintiffs here all allege that they are persons who paid fees to Reed Hein for services to terminate their timeshare obligations.⁵ They all allege that they have suffered damages from paying those fees, implying that they have not received refunds.⁶ The purported class in this lawsuit is:

² See, e.g., Dkt. No. 1 at ¶¶81–108.

³ *Adolph* Dkt. 1, Lovejoy Ex. 1 (references to "*Adolph* Dkt. ____" refer to the record of *Adolph v. Reed Hein & Associates et al.*, United States District Court, Western District of Washington, Case No. 2:21-cv-01378-BJR). For the Court's convenience, copies of documents filed in *Adolph* are attached to the Declaration of Jack M. Lovejoy, filed herewith.

⁴ *Adolph* Dkt. 23, Lovejoy Ex. 23 at 2:5-7.

⁵ Dkt. 1 at ¶ 16-66.

⁶ Dkt. 1 at 47:13.

All individuals who, during the applicable statute of limitations, paid money to Reed Hein and Time Share Exit Team for the purpose of obtaining an “exit” from their timeshare obligations after being exposed to, and/or in reliance on, the statements and other representations made by Dave Ramsey, and the Lampo Group.⁷

This proposed class is a subset of the *Adolph* class.

2. As members of the *Adolph* class, the Plaintiffs and all members of the proposed class have settled their claims against Reed Hein and Mr. Reed.

On December 30, 2022, the *Adolph* Court preliminarily approved a class-wide settlement.⁸ On May 19, 2023, the *Adolph* Court entered its final approval of the settlement.⁹ On June 15, 2023, the *Adolph* Court entered a final Confession of Judgment and Judgment with Covenant Not to Execute based on the parties’ settlement.¹⁰ None of the Plaintiffs opted out of the class.¹¹

3. The basis for the settlement with Reed Hein and Brandon Reed was, in Plaintiffs’ counsel’s words, the limited nature Reed Hein’s and Mr. Reed’s assets.

The settlement of the *Adolph* case did not involve a cash payment.¹² Instead, Reed Hein and Mr. Reed assigned to the *Adolph* class all of the claims that Reed Hein or Mr. Reed had against various third parties, including insurers, law firms, and Reed Hein’s other founder, Trevor Hein, and agreed to various forms of cooperation with the class.¹³ The *Adolph* plaintiffs’ motion to approve the settlement argued that the settlement was “objectively superior to continued litigation,” in part due to the fact that Reed Hein and Mr. Reed had few assets remaining to continue litigation and provide a meaningful recovery to the customers.¹⁴

⁷ Dkt. No. 1 at ¶ 191.

⁸ *Adolph* Dkt. 27, Lovejoy Ex. 27.

⁹ *Adolph* Dkt. 43, Lovejoy Ex. 43.

¹⁰ *Adolph* Dkt. 45, Lovejoy Ex. 45.

¹¹ *Adolph* Dkt. 38, Lovejoy Ex. 38, at ¶ 12, listing all those who opted out.

¹² *Adolph* Dkt. 25-1, Lovejoy Ex. 25-1.

¹³ *Id.* at II(4-16).

¹⁴ *Adolph* Dkt. 24 at 2:15 and Dkt. 25 at ¶¶ 23-26, Lovejoy Exs. 24 and 25.

1 **4. In the *Adolph* case, the plaintiffs acknowledged that one asset that would**
 2 **remain to Mr. Reed after settlement was Happy Hour.**

3 In support of the *Adolph* plaintiffs' argument that Reed Hein and Mr. Reed had limited
 4 assets, Plaintiffs filed a declaration of their attorney, Gregory Albert ("Albert Declaration").¹⁵
 5 The Albert Declaration described how he had examined documentation of the assets of Reed
 6 Hein and Mr. Reed on several occasions.¹⁶ In addition to discussing the assets being assigned
 7 in the settlement, he also noted that "Mr. Reed has a fifty percent interest in Happy Hour Media
 8 Group, LLC."¹⁷ This asset was not assigned to the *Adolph* class in the settlement.¹⁸

9 In support of their preliminary motion for class settlement approval, the *Adolph*
 10 plaintiffs also submitted a Declaration of Brandon Reed, which explicitly noted that aside from
 11 assets he was assigning in the settlement, he had no substantial assets other than "A 50%
 12 ownership interest in Happy Hour Media Group LLC" and an overdue receivable on a loan.¹⁹
 13 The *Adolph* plaintiffs' briefing explained:

14 Mr. Reed's remaining net worth is minimal. Mr. Reed has a fifty percent
 15 interest in Happy Hour [], which has \$1,489,966.90 in equity but \$1,624,028 in
 16 debt. The only other substantial asset Mr. Reed has is an "overdue" account
 17 receivable for \$623,730 for a loan to Trevor Hein that Mr. Hein has declined to
 18 pay.²⁰

19 Based on the submissions by plaintiffs, including the declarations of Mr. Albert and Mr. Reed,
 20 the *Adolph* court approved the parties' settlement agreement.²¹

21

 22 ¹⁵ *Adolph* Dkt. 25, Lovejoy Ex. 25.

23 ¹⁶ *Id.* at ¶ 23

24 ¹⁷ *Id.* (emphasis added).

25 ¹⁸ *Adolph* Dkt. 25-1, Lovejoy Ex. 25 at II(4-16).

¹⁹ *Adolph* Dkt. 26, Lovejoy Ex. 26.

²⁰ *Adolph* Dkt. 24 at 2:16-19 (internal citations omitted).

²¹ *Adolph* Dkt. 43, Lovejoy Ex. 43.

1 **5. The *Adolph* Court entered judgment prohibiting members of the *Adolph***
 2 **class from recovering any funds from Brandon Reed’s assets.**

3 As part of the *Adolph* settlement, Reed Hein and Brandon Reed entered into a
 4 Confession of Judgment in the amount of \$630,187,204.²² In exchange for the consideration
 5 provided to the *Adolph* class, including the assigned claims and the Confession, the *Adolph*
 6 class requested and the Court entered a final judgment that provided that the class “**will never**
 7 **execute upon or attempt to enforce any judgment against the assets of the Defendant**
 8 **Parties.**”²³

9 **6. In this lawsuit, members of the *Adolph* class are seeking to obtain and**
 10 **enforce a judgment against Brandon Reed’s asset Happy Hour.**

11 Despite the *Adolph* Court’s prohibition on members of the *Adolph* class attempting to
 12 execute or enforce a judgment against Brandon Reed’s assets, the Plaintiffs in this lawsuit, all
 13 of whom are *Adolph* class members, are seeking to obtain and enforce a judgment against
 14 Happy Hour.

15 **B. The lengthy Complaint contains very few allegations against Happy Hour.**

16 The Complaint contains 215 paragraphs of allegations.²⁴ The following paragraphs do
 17 not attempt to state claims against Happy Hour:

- 18 • Paragraphs 1-15 give an overview of the parties and claims;
- 19 • Paragraphs 16-66 introduce the named plaintiffs and their interactions with Reed Hein
 20 and defendant Dave Ramsey, paragraphs 178-190 repeat these allegations, and none of
 21 these paragraphs mentions Happy Hour;
- 22 • Paragraphs 191-200 are procedural allegations about the propriety of a class action and
 23 do not mention Happy Hour;
- 24 • Paragraphs 66-72 name and introduce the defendants again;

25 ²² *Adolph* Dkt. 45, Lovejoy Ex. 45 at 5:16.

²³ *Adolph* Dkt. 44, 44-1, 45, Lovejoy Exs. 44, 44-1, and 45 at 5:20-23 (emphasis added).

²⁴ See generally Dkt. No. 1.

- Paragraphs 73-80 discuss jurisdiction and venue;
- Paragraphs 81-108 are allegations about Reed Hein;
- Paragraphs 201-215 recite the elements of Plaintiffs’ causes of action in general terms and do not mention Happy Hour; and
- Paragraphs 115-122, 124, 125, and 127-177 all attempt to present the substance of Plaintiffs’ claims, but none of them accuse Happy Hour of anything.

Only eight (8) paragraphs make any substantive allegation about Happy Hour (¶¶ 109–114; 123; 126).

The allegations against Happy Hour are:

- ¶ 109: “At all times since [May 2015], Happy Hour [] has acted as Reed Hein’s in-house marketing department. Happy Hour [] promoted and paid for all false advertisements described within this complaint.”
- ¶¶ 110, 112, 113, 126: Happy Hour served as an intermediary who received money from Reed Hein to spend on marketing and paid some of that money, up to millions of dollars per year, to Dave Ramsey and/or the Lampo Group for advertising spots on Mr. Ramsey’s programs.
- ¶ 111: Brandon Reed and Christopher Holcomb took all actions attributed to Happy Hour in the Complaint or instructed subordinates at Happy Hour to do so.
- ¶¶ 114, ¶ 123: “Reed Hein and Happy Hour [] struck a deal with the Lampo Group in which Dave Ramsey agreed to make false statements about Reed Hein to induce his followers to spend money on Reed Hein’s illusory services;” “Ramsey promoted Reed Hein” and Ramsey and Reed Hein both made money as a result. ¶ 123.

The Complaint does not allege that Happy Hour made any representation or misrepresentation to, or otherwise interacted with, any plaintiff or class member. The Complaint does not explain what Happy Hour did to “promote” allegedly false advertisements, other than buying ad space on Mr. Ramsey’s programs. The Complaint does not explain what it means when it alleges that Reed Hein and Happy Hour “struck a deal” with the Lampo Group. The terms of this deal are

not alleged. The manner in which the alleged deal was struck is not alleged. Happy Hour's supposed role in the striking of the deal is not alleged. From the allegations in the Complaint, it appears that the deal was simply that Reed Hein would buy ad space on Ramsey's programs and Happy Hour's role was simply to pay for that ad space.

The Complaint alleges that the limited substantive allegations about Happy Hour support causes of action for (1) Violation of the Washington Consumer Protection Act; (2) Negligent Misrepresentation; and (3) Conspiracy.²⁵ Plaintiffs do not name Happy Hour as a defendant with respect to their claim for Unjust Enrichment.²⁶

III. ARGUMENT AND AUTHORITIES

A. Relief cannot be granted to the Plaintiffs because the *Adolph* judgment prohibits plaintiffs from executing or enforcing any judgment against Happy Hour.

Under Fed. R. Civ. P. 12(b)(6), this Court may dismiss a Complaint for "failure to state a claim upon which relief can be granted." Rule 12(b)(6) exists to weed out unmeritorious complaints. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559, 127 S. Ct. 1955 (2007). The Complaint fails to state a claim against Happy Hour because the *Adolph* judgment precludes the Plaintiffs from obtaining or enforcing a judgment against any of Brandon Reed's assets, and Happy Hour is one of those assets. Because any judgment obtained by Plaintiffs in this matter would be unenforceable, no effective relief can be granted to the Plaintiffs in this action.

1. The Court may consider the records of the *Adolph* case when deciding this Motion.

While a Court normally will not consider materials outside the Complaint on a motion under Fed. R. Civ. P. 12(b)(6), a court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Judicially noticeable public records

²⁵ Dkt. 1 at ¶¶ 201–08; 214–15.

²⁶ Dkt. 1 at ¶¶ 209–213.

1 include the records of other lawsuits. *Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir.
 2 2014); *Kipp v. Davis*, 971 F.3d 939 n. 2 (9th Cir. 2020); *Skilstaf, Inc. v. CVS Caremark Corp.*,
 3 669 F.3d 1005, 1014 (9th Cir. 2012) (the district court properly took judicial notice of
 4 “transcripts, letters, pleadings, and other documents filed in an earlier case). Here, the Court
 5 may take judicial notice of the Judgment and associated motions and declarations from the
 6 *Adolph* matter cited in this motion.

7 **2. Every Plaintiff and proposed class member is a member of the *Adolph***
 8 **class.**

9 The Complaint describes each of the Plaintiffs as a person who paid Reed Hein for
 10 timeshare exit services.²⁷ The Complaint alleges that the Plaintiffs are entitled to damages for
 11 the fees they paid to Reed Hein, implying that they have not received refunds.²⁸ Each Plaintiff
 12 therefore fits within the class certified by the *Adolph* Court. None of the Plaintiffs opted out of
 13 the *Adolph* settlement. Hence, each named Plaintiff is a member of the *Adolph* class.

14 The Complaint describes the proposed class in this matter as individuals who paid
 15 money to Reed Hein for timeshare exit services (with the additional characteristics that they did
 16 so within a statute of limitations and after relying on Dave Ramsey).²⁹ The Complaint requests
 17 an award of damages for those fees, again implying that the fees have not been refunded.³⁰
 18 Hence, each member of the proposed class is also a member of the *Adolph* class.

19 **3. As members of the *Adolph* class, the named Plaintiffs and unnamed**
 20 **members of the proposed class are bound by the *Adolph* Judgment.**

21 A judgment in a class action binds members of a class even if they were not named
 22 parties to the class action. *Hansberry v. Lee*, 311 U.S. 32, 41, 61 S.Ct. 115 (1940). Moreover,

23 ²⁷ Dkt. 1, Lovejoy Ex. 1 at ¶¶ 16-66.

24 ²⁸ Dkt. 1, Lovejoy Ex. 1 at 47:13.

25 ²⁹ Dkt. 1, Lovejoy Ex. 1 at ¶ 191.

³⁰ Dkt. 1, Lovejoy Ex. 1 at 47:13.

1 “[a] settlement agreement may preclude a party from bringing a related claim in the future even
2 though the claim was not presented and might not have been presentable in the class action.”
3 *Marshall v. Northrop Grumman Corp.*, 469 F. Supp. 3d 942, 948–49 (C.D. Cal. 2020) (citations
4 and internal quotations omitted). A covenant not to sue in a class action settlement is
5 enforceable against members of the class, even if they were not named plaintiffs. *Skilstaf, Inc.*
6 *v. CVS Caremark Corp.*, 669 F.3d 1005 (9th Cir. 2012).

7 The Ninth Circuit decision in *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005 (9th
8 Cir. 2012), demonstrates the preclusive effect of a covenant in a class action judgment. *Skilstaf,*
9 *Inc.* was an unnamed class member in a class action filed in Massachusetts federal district court.
10 *Id.* at 1007–08. The class consisted of third-party payors who reimbursed consumers’ purchases
11 of certain prescription drugs. *Id.* at 1008. The defendants were a wholesale drug distributor
12 called McKesson, and First Data Bank. *Id.* The Massachusetts court certified the class and
13 provided notice to the class members and a right to opt-out of the class settlement. *Id.* at 1009.
14 The class settlement provided a release of defendants and affiliated parties, as well as a covenant
15 not to sue, which read: “All Releasers covenant and agree that they shall not hereafter seek to
16 establish liability against any Released Party or any other person based, in whole or in part, on
17 any of the Released Claims.” *Id.* at 1009.

18 At the fairness hearing, *Skilstaf* objected to the settlement, asking the Court to strike the
19 words “or any other person” from the covenant not to sue. *Id.* at 1011. In response, McKesson
20 argued that “the broad covenant not to sue was a critical part of the settlement because ‘[i]f all
21 McKesson had was a release, it would remain exposed to claims for indemnification or
22 contribution if plaintiffs filed new lawsuits against third parties based on the claims that
23 McKesson had just settled.’” *Id.* at 1012. *Skilstaf* was given a second opportunity to opt out of
24 the settlement agreement but declined to do so. *Id.* at 1012. The Massachusetts court entered a
25 final judgment certifying a nationwide class action and approving the class settlement,

1 including the covenant not to sue as originally worded, and Skilstaf received its benefits from
2 the settlement. *Id.* at 1013.

3 Separately from the Massachusetts class action, Skilstaf filed a lawsuit in the Northern
4 District of California against CVS Caremark Corp. and other pharmacies who were not parties
5 to the Massachusetts lawsuit. *Id.* at 1013–14. Skilstaf’s claims were based on the same operative
6 facts as the claims released in the Massachusetts class action. The California defendants
7 successfully moved to dismiss Skilstaf’s claims under Fed. R. Civ. P. 12(b)(6) “on the basis
8 that they were precluded by the covenant not to sue that the Massachusetts court had approved
9 as part of the [Massachusetts] settlement agreement[.]” *Id.* at 1013. The California court noted
10 that the Massachusetts settlement prevented lawsuits against ‘any other person’ based on
11 released claims and that Skilstaf was a member of the Massachusetts class. *Id.* at 1014.
12 “Describing Skilstaf’s decision to remain in the class and accept its portion of the settlement
13 proceeds as ‘informed and strategic,’ the court concluded that ‘Skilstaf cannot now attempt to
14 circumvent the limitations that attended those benefits.’” *Id.* The Ninth Circuit affirmed the
15 California court’s dismissal of Skilstaf’s lawsuit. *Id.* at 1018–19.

16 Here, just as in *Skilstaf*, the Plaintiffs, who were members of the *Adolph* class, are bound
17 by the covenants in the settlement and judgment approved by the *Adolph* Court. The *Adolph*
18 judgment says that the *Adolph* class members “**will never execute upon or attempt to enforce**
19 **any judgment against the assets of the Defendant Parties.**”³¹ The Plaintiffs were on notice
20 of the terms of the Judgment and had the opportunity to opt out of the settlement. The *Adolph*
21 Court record, including the testimony of Plaintiffs’ counsel, made it clear that Happy Hour was
22 one of Mr. Reed’s assets that would become off-limits as a result of the proposed Judgment.
23 Just as in *Skilstaf*, the broad covenant not to enforce or execute any judgment against any asset
24 of Mr. Reed was an important element of the settlement. As alleged in the Complaint, the
25

³¹ Dkt. 45, Lovejoy Ex. 45 at 5:20-23 (emphasis added).

1 attorney who represented the *Adolph* class and the Plaintiffs in this suit was engaged in serial
 2 lawsuits and arbitrations against Reed Hein and Mr. Reed. Without a broad covenant
 3 prohibiting all further attempts to collect Mr. Reed's dwindling assets, members of the class
 4 and their attorney could have simply continued to effectively sue Mr. Reed on the settled claims,
 5 which is exactly what the Plaintiffs are trying to do now. If the people who are now Plaintiffs
 6 in this lawsuit had intended to preserve their opportunity to seek to recover from Happy Hour
 7 or any other asset of Mr. Reed's, they could have objected to the proposed judgment's reference
 8 to "the assets of the Defendant Parties" or they could have opted out of the class. None of them
 9 did so.³² The Plaintiffs and the proposed class in this lawsuit are therefore bound by the *Adolph*
 10 judgment's covenant not to execute or enforce any judgment against any asset of Mr. Reed,
 11 including Happy Hour.

12 **4. The *Adolph* Judgment prohibits the *Patrick* class from stating a claim**
 13 **upon which relief can be granted because it renders this matter moot.**

14 The covenant not to execute or enforce any judgment against Happy Hour necessarily
 15 renders the *Patrick* Complaint non-justiciable. *Wallingford v. Bonta*, ---F.4th---, 21-56292,
 16 2023 WL 6153588 at *2, *7 (9th Cir. Sept. 21, 2023)(when effective relief can no longer be
 17 granted, a dispute becomes moot and ceases to be a "case or controversy" for purposes of Article
 18 III). Any judgment that might be obtained against Happy Hour in this lawsuit would be
 19 worthless and moot because it could not be executed or enforced. Because there is no
 20 meaningful relief that can be granted to the Plaintiffs in this lawsuit, the Complaint must be
 21 dismissed under Fed. R. Civ. P. 12(b)(6) with prejudice.

22
 23
 24
 25

³² Dkt. 38, Lovejoy Ex. 38 at ¶ 12.

1 **5. Plaintiffs are judicially estopped from asserting that Happy Hour is not an**
 2 **asset of Brandon Reed.**

3 Plaintiffs are judicially estopped from denying the truth of the factual statements made
 4 in the documents filed by the Plaintiffs in the *Adolph* matter. Judicial estoppel is “an equitable
 5 doctrine that precludes a party from gaining an advantage by asserting one position, and then
 6 later seeking an advantage by taking a clearly inconsistent position.” *Hamilton v. State Farm*
 7 *Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (citation omitted). When considering
 8 whether to apply judicial estoppel, the court may consider (1) whether the party’s later position
 9 is clearly inconsistent with its earlier position; (2) “whether the party has succeeded in
 10 persuading the court to accept that party’s earlier position, so that judicial acceptance of an
 11 inconsistent position in a later proceeding would create the perception that either the first or
 12 second court was misled”; and (3) whether the party seeking to assert an inconsistent position
 13 would “derive an unfair advantage or impose an unfair detriment on the opposing party if not
 14 estopped.” *Id.* (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750–51, 121 S.Ct. 1808
 15 (2001)). Judicial estoppel is “invoked not only to prevent a party from gaining an advantage
 16 by taking inconsistent positions, but also because of general considerations of the orderly
 17 administration of justice and regard for the dignity of judicial proceedings, and to protect
 18 against a litigant playing fast and loose with the courts.” *Milton H. Greene Archives, Inc. v.*
 19 *Marilyn Monroe LLC*, 692 F.3d 983, 993 (9th Cir. 2012) (internal quotations and citations
 20 omitted).

21 In the *Adolph* matter, the *Adolph* plaintiffs submitted testimony and briefing urging the
 22 Court to approve the proposed settlement and confession of judgment in part because Mr. Reed
 23 is insolvent and Happy Hour is his only remaining meaningful asset.³³ That testimony and
 24 argument was submitted to the Court on behalf of all of the members of the *Adolph* class,

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³³ *Adolph* Dkt. 24 at 2:16-19; *Adolph* Dkt. 25, Lovejoy Ex. 25 at ¶¶ 23–24; *Adolph* Dkt. 26,
 Lovejoy Ex. 26.

including the Plaintiffs herein. It was presented by one of the same law firms representing the Plaintiffs in this matter. The *Adolph* class, including the Plaintiffs herein, benefitted from these representations by persuading the Court to approve the settlement and enter their requested judgment. The doctrine of judicial estoppel prevents the Plaintiffs from now arguing that Happy Hour is not an asset of Mr. Reed. Allowing the Plaintiffs to assert in this lawsuit that Happy Hour is not an asset of Mr. Reed's and to sidestep the covenant in the *Adolph* judgment would "impose an unfair detriment" on both Mr. Reed and Happy Hour, who are entitled to the few benefits Mr. Reed was able to negotiate in the *Adolph* settlement.

B. The Complaint fails to state a claim against Happy Hour because it does not allege sufficient factual content to support a claim that is plausible on its face.

Federal Rule of Civil Procedure 8(a) "demand[s] more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009). A claim has "facial plausibility" when a plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

A plaintiff's complaint must rise above the mere conceivability or possibility of unlawful conduct that entitles the pleader to relief. *Iqbal*, 556 U.S. at 678–79. "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. A complaint will not suffice "if it tenders 'naked assertion[s] devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 667 (citing *Twombly*, 550 U.S. at 557). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557). Nor is it enough that the complaint is "factually neutral," rather it must be "factually suggestive." *Twombly*, 550 U.S. at 557 n. 5.

1 “[W]hen the allegations in a complaint, however true, could not raise a claim of
 2 entitlement to relief, this basic deficiency should be exposed at the point of minimum
 3 expenditure of time and money by the parties and the court.” *Twombly*, 550 U.S. at 557
 4 (quotations omitted); *see also Somers v. Apple, Inc.*, 729 F.3d 953, 966 (9th Cir. 2013)
 5 (Supreme Court’s insistence in *Twombly* “on specificity of facts is warranted before permitting
 6 a case to proceed into costly and protracted discovery”).

7
 8 **1. Plaintiffs do not state a plausible claim for violations of the Consumer**
 9 **Protection Act because they do not allege any interactions between Happy**
 10 **Hour and consumers or any unfair or deceptive act by Happy Hour.**

11 To plead a plausible claim for a violation of the Consumer Protection Act (CPA),
 12 Plaintiffs must allege, among other things, that Happy Hour engaged in an “unfair or deceptive
 13 act or practice” in trade or commerce. *Hangman Ridge Training Stables, Inc. v. Safeco Title*
Ins. Co., 105 Wn.2d 778, 780 (1986).

14 Before examining Plaintiffs’ allegations against Happy Hour, it is important to note that
 15 one premise of this lawsuit must be that Happy Hour is distinct from Reed Hein. If the Plaintiffs
 16 were to argue that Reed Hein and Happy Hour are one and the same, they would be even more
 17 blatantly violating their settlement with Reed Hein. Hence, the Complaint’s many allegations
 18 against Reed Hein cannot be read as allegations against Happy Hour. Instead, only the
 19 allegations specifically against Happy Hour can be considered when analyzing whether the
 20 Complaint states a plausible claim against Happy Hour. The allegations in the eight substantive
 21 paragraphs discussing Happy Hour are insufficient, if believed, to establish an unfair or
 22 deceptive act or practice by Happy Hour in trade or commerce.

23 The first allegation against Happy Hour is that it was an “in-house marketing department
 24 for Reed Hein.”³⁴ The Complaint does not explain what it means by “in-house marketing
 25

³⁴ Dkt. 1 ¶ 109.

1 department.” In any event, the Complaint does not allege that there is anything unfair or
2 deceptive about being an in-house marketing department.

3 The next allegation is that Happy Hour “promoted and paid for all false advertisements”
4 described in the complaint.³⁵ The Complaint does not provide any factual content to explain
5 what it means by alleging that Happy Hour “promoted” advertisements. The only concrete act
6 that the Complaint alleges by Happy Hour is that it acted as an intermediary for Reed Hein to
7 pay for ad space on Ramsey’s programs.³⁶ There is nothing unfair or deceptive about paying
8 for ad space.

9 The next allegation against Happy Hour is that it acted through Brandon Reed and Chris
10 Holcomb.³⁷ This is not an allegation of unfair or deceptive acts. All limited liability companies
11 act through individuals.

12 The final allegation against Happy Hour is that it, along with Reed Hein, “struck a deal”
13 with Ramsey in which Ramsey agreed to make false statements.³⁸ The Plaintiffs do not allege
14 what the terms of this deal were, that this deal involved Happy Hour doing anything unfair or
15 deceptive, or that Happy Hour did anything other than act as an intermediary for payments.
16 Instead, it appears that the concept of a “deal” was added to the Complaint merely to provide a
17 formulaic recitation of one of the elements of Plaintiffs’ claim for conspiracy. This allegation
18 of a shapeless “deal” is exactly the sort “‘naked assertion[s] devoid of ‘further factual
19 enhancement’” that cannot support a viable complaint. *Iqbal*, 556 U.S. at 667 (citing *Twombly*,
20 550 U.S. at 557.

21 All of the allegations in the Complaint that attempt to provide sufficient factual content
22 to support plausible claims relate to other parties. For instance, while the Plaintiffs allege that
23

24 ³⁵ *Id.*

25 ³⁶ *Id.* at ¶¶ 110, 112, 113, 126.

³⁷ *Id.* at ¶ 111.

³⁸ *Id.* at ¶¶ 114 and 123.

1 they heard false statements made by the Ramsey Defendants, they do not allege any false
 2 statements by Happy Hour.³⁹ Similarly, paragraph 202 provides a laundry list of allegedly
 3 deceptive acts and they all relate entirely to other parties, not Happy Hour. Those acts include
 4 “produc[ing] advertising” that was “deceptive” and “perpetuates . . . consumer fraud,” acts in
 5 which Happy Hour is not alleged to have taken part.⁴⁰

6 Because there are no allegations of unfair or deceptive acts or practices in trade or
 7 commerce by Happy Hour—in fact there are no allegations of any interactions between Happy
 8 Hour and any consumer at all—the Complaint does not state a plausible claim for violation of
 9 the CPA by Happy Hour. Count One of the Complaint must therefore be dismissed as it relates
 10 to Happy Hour.

11 **2. The Complaint does not state a plausible claim for negligent**
 12 **misrepresentation because it does not allege any misrepresentation by**
 13 **Happy Hour.**

14 To make a claim for negligent misrepresentation, a plaintiff must show proof of seven
 15 elements by clear, cogent, and convincing evidence. *Repin v. State*, 198 Wn. App. 243, 278,
 16 392 P.3d 1174, 1191 (2017). Those elements are:

- 17 (1) the defendant supplied information for the guidance of another in his or her business
- 18 transactions;
- 19 (2) the information was false;
- 20 (3) the defendant knew or should have known that the information was supplied to guide
- 21 the plaintiff in his or her business transactions;
- 22 (4) the defendant was negligent in obtaining or communicating the false information;
- 23 (5) the plaintiff relied on the false information;

24 ³⁹ See generally Dkt. No. 1.

25 ⁴⁰ *Id.* at ¶¶ 202 (“The Lampo Group, Dave Ramsey specifically committed the following unfair and deceptive trade practices, which harmed Reed Hein customers....”)

(6) the plaintiff's reliance was reasonable; and

(7) the false information proximately caused the plaintiff damages.

The section of the Complaint that states Count Two, for Negligent Misrepresentation, says: "As alleged above, Defendants supplied representations that were false for the guidance of Plaintiffs."⁴¹ But nowhere "above" does the Complaint ever allege that Happy Hour supplied any statement or other representation for the guidance of anyone. The Complaint alleges that Reed Hein provided "false claims" to the Ramsey Defendants.⁴² The Complaint alleges that the Ramsey Defendants made statements to consumers. But there is no allegation that (1) Happy Hour supplied information for the guidance of any plaintiff, (2) Happy Hour supplied any false information, (3) Happy Hour knew or should have known that any information it was supplying information for the guidance of Plaintiffs, (4) Happy Hour was negligent in obtaining or communicating false information, (5) Plaintiffs relied on information from Happy Hour, (6) it was reasonable for any Plaintiff to rely on Happy Hour, or (7) that information from Happy Hour proximately caused Plaintiffs' damages.

Plaintiffs have failed to plead the basic elements of a claim for negligent misrepresentation against Happy Hour. Therefore, Count Two of the Complaint should be dismissed as it relates to Happy Hour.

3. The Plaintiffs' allegation of a "deal" cannot support a plausible Conspiracy claim.

To establish a civil conspiracy, Plaintiffs "must prove by clear, cogent, and convincing evidence that (1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered

⁴¹ Dkt. No. 1 at ¶ 205.

⁴² Dkt. No. 1 at ¶ 5 ("From 2015 to 2021, Reed Hein paid Dave Ramsey and the Lampo Group to make false claims and instruct Ramsey's faithful listeners to hire Reed Hein."); ¶ 6 ("Reed Hein made many claims that any competent financial advisor with Dave Ramsey's knowledge and skill would know to be false").

1 into an agreement to accomplish the conspiracy.” *All Star Gas, Inc., of Wash. v. Bechard*, 100
 2 Wn. App. 732, 740, 998 P.2d 367 (2000). “Mere suspicion or commonality of interests is
 3 insufficient to prove conspiracy.” *Id.* (quoting *Wilson v. State*, 84 Wn. App. 332, 350–51, 929
 4 P.2d 448 (1996)).

5 Plaintiffs’ claim for conspiracy is supported by only two conclusory and duplicative
 6 allegations. Plaintiffs allege that Reed Hein and Happy Hour “struck a deal with The Lampo
 7 Group in which Dave Ramsey agreed to make false statements about Reed Hein.”⁴³ They also
 8 allege: “Ramsey struck a deal with Reed Hein and Happy Hour [] to generate tens of millions
 9 of dollars sending his followers to Reed Hein...Ramsey promoted Reed Hein by making untrue
 10 claims to his listeners.”⁴⁴ Count 4 of the Complaint rephrases these allegations twice. First, it
 11 says: “defendants agreed and collaborated together and with Reed Hein and its employees and
 12 officers and owners to accomplish the above by making deceptive statements to Reed Hein
 13 customers and Dave Ramsey listeners.”⁴⁵ Next, Count 4 says Defendants “agreed among
 14 themselves and with Reed Hein to make deceptive and fraudulent statements about the services
 15 Reed Hein provided to induce customers to pay money for Reed Hein [*sic*] services.”⁴⁶

16 These four iterations of the claim that Happy Hour was party to “a deal” are the epitome
 17 of the “formulaic recitation of the elements of a cause of action,” *Twombly*, 550 U.S. at 555.
 18 The Complaint never alleges anything specific or concrete about what Happy Hour allegedly
 19 agreed to do or that Happy Hour did anything to mislead consumers. The only specific
 20 allegation against Happy Hour is that it was an intermediary for Reed Hein to pay Ramsey for
 21 ad space.

22
 23 ⁴³ Dkt. 1 at ¶ 114.

24 ⁴⁴ *Id.* at ¶ 123.

25 ⁴⁵ *Id.* at ¶ 214.

⁴⁶ *Id.* at ¶ 215.

C. The claims of several of the Plaintiffs should be dismissed because they are barred by applicable statutes of limitations.

Happy Hour endorses the arguments advanced by the Ramsey Defendants in their Motion to Dismiss in favor of dismissing:

- All claims of Robert and Samantha Nixon and Marilyn Dewey and
- The negligent misrepresentation and civil conspiracy claims of Leisa Garrett, David and Rosemarie Bottonfield, Tasha Ryan, and Peter and Rachel Rollins.⁴⁷

The arguments in the Ramsey Defendants' Motion, and most of the arguments in their Reply, are equally applicable to Happy Hour. For efficiency's sake, Happy Hour will not repeat those arguments in detail. However, there are two issues raised in the Plaintiffs' response to the Ramsey Defendants' Motion and addressed in the Ramsey Defendants' Reply that require a brief analysis individualized to Happy Hour.

The Plaintiffs argued that their limitations periods were tolled by fraudulent concealment. As the Ramsey Defendants explained in their reply, fraudulent concealment only tolls a claim against a defendant who acted affirmatively to prevent a plaintiff from timely filing their case. *Lukovsky v. City & Cnty. Of San Francisco*, 535 F.3d 1044, 1051-52 (9th Cir. 2008); *August v. U.S. Bancorp*, 146 Wn. App. 328, 347, 190 P.3d 86, 96 (2008). The Complaint alleges concealment by Reed Hein, but not by Happy Hour. In fact, the Complaint does not allege any interaction between Happy Hour and the Plaintiffs at all. As a result, there is no basis to find that any claim against Happy Hour was ever tolled by fraudulent concealment.

The Plaintiffs also argued that the limitations periods on their CPA claims were tolled during the State of Washington lawsuit against Reed Hein. As the Ramsey Defendants explained in their Reply, the tolling provision in the CPA only applies to rights of action "based in whole or part on any matter complained of in said action by the attorney general." RCW 19.86.120. The Plaintiffs did not point to any case or commentary suggesting that the CPA's

⁴⁷ Dkt. 25 (Motion) at 19:21-20:24 and Dkt. 31 (Reply) at 9:18-11:19.

1 tolling provision tolls or was intended to toll actions against parties other than the defendants
 2 in a lawsuit brought by the attorney general. And there is nothing in the Attorney General's
 3 Complaint that alleges any wrongdoing by Happy Hour.⁴⁸ For the reasons discussed in the
 4 Ramsey Defendants' Reply, the tolling provision of the CPA cannot be read to apply to
 5 Plaintiffs' claims against Happy Hour.

6 IV. CONCLUSION

7 As alleged in the Complaint, Plaintiffs' counsel has been trying to make cases against
 8 Reed Hein for years. And the result is that Plaintiffs have filed another lawsuit about Reed Hein.
 9 After years of investigation, all that the Plaintiffs have managed to allege against Happy Hour
 10 is that it did what every marketing agency does; it acted as an intermediary that paid for ad
 11 spots. The Complaint says so little about Happy Hour, it appears that Happy Hour was only
 12 added to the lawsuit to create a basis for hearing the case in the district where Plaintiffs' counsel
 13 reside, rather than for the merits of any claim against Happy Hour. Happy Hour is not alleged
 14 to have deceived anyone or even to have interacted with any Plaintiff. The bald allegation that
 15 there was some unspecified "deal" is not sufficient to link Happy Hour to any alleged
 16 misstatement or support a cause of action against it.

17 Even if there was a basis for a claim against Happy Hour, the case against Happy Hour
 18 must be dismissed. Mr. Reed negotiated away all the valuable assets he could in order to ensure
 19 that this lawsuit would not happen, and he received not only a settlement, but a judgment from
 20 this Court prohibiting a lawsuit like this one. The terms of the *Adolph* settlement and judgment
 21 were bargained for and endorsed by the Plaintiffs' own attorney on their behalf. And they
 22 prohibit executing or enforcing any judgment against Happy Hour. With no prospect of an
 23 enforceable judgment, the plaintiffs are unable to state any claim upon which any effective
 24

25 ⁴⁸ See Complaint, *State of Washington v. Reed Hein & Associates, LLC, et al.*, King County
 Superior Court Case No. 20-2-03141-1 SEA, Lovejoy Ex. A. For the reasons stated above, the Court
 may take judicial notice of this court record.

1 relief can be granted against Happy Hour. Their effort to skirt the *Adolph* judgment should end
2 now.

3 For these reasons, Happy Hour respectfully requests that the Complaint against it be
4 dismissed with prejudice.

5
6 DATED this 5th day of October, 2023.

7 This motion contains 6099 words per LCR 7(e).

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ Wen Cruz

Wen Cruz